

**CITY OF BALTIMORE
COUNCIL BILL 16-0655
(First Reader)**

Introduced by: Councilmembers Clarke, Henry, Scott, Curran, Middleton, Reisinger, Stokes,
Welch, President Young, Councilmembers Branch, Costello, Holton

Introduced and read first time: April 18, 2016

Assigned to: Labor Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Wage Commission, Baltimore
Development Corporation, Department of Finance, Mayor's Office of Employment
Development, Department of Human Resources

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Labor and Employment – City Minimum Wage**

3 FOR the purpose of setting Baltimore City's minimum wage rate for the years 2016 through 2021;
4 setting the formula to determine Baltimore City's minimum wage rate from 2021 onward;
5 defining certain terms; setting the terms and qualifications for Wage Commission members;
6 requiring the production and posting of multilingual posters summarizing Baltimore City's
7 minimum wage laws; setting Baltimore City's tipped minimum wage rate through 2025;
8 eliminating the lower tipped minimum wage rate from 2025 onward; limiting the
9 withholdings employers may make from employee wages; allowing any person to make a
10 complaint to the Wage Commission; changing the Wage Commission's procedures for
11 responding to complaints; repealing the prohibition of bad faith employee complaints to the
12 Wage Commission; establishing certain penalties; clarifying and conforming related
13 provisions; and generally relating to the minimum wage to be paid to employees in Baltimore
14 City.

15 BY repealing and reordaining, with amendments

16 Article 11 - Labor and Employment

17 Section(s) 1-1, 1-2, 2-2, 2-5, 2-6, 3-1, 3-2, 3-4 to 3-6, 3-8, 4-1 to 4-3, 4-5 to 4-10, 5-1, 5-2,
18 and 6-2

19 Baltimore City Code
20 (Edition 2000)

21 BY repealing and reordaining, without amendments

22 Article 11 - Labor and Employment

23 Section(s) 1-3

24 Baltimore City Code
25 (Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 BY adding
2 Article 11 - Labor and Employment
3 Section(s) 1-4, 1-5 and 2-7 to 2-9
4 Baltimore City Code
5 (Edition 2000)

6 BY repealing
7 Article 11 - Labor and Employment
8 Section(s) 5-6
9 Baltimore City Code
10 (Edition 2000)

11 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
12 Laws of Baltimore City read as follows:

13 **Baltimore City Code**

14 **Article 11. Labor and Employment**

15 **Division 1. Minimum Wage law**

16 **Subtitle 1. Definitions; General Provisions**

17 **§ 1-1. Definitions.**

18 (a) *In general.*

19 The terms hereinafter set forth, wherever used in this Division I, are defined as follows.

20 (b) *Employ.*

21 “Employ” means to permit to work.

22 (c) *Employer.*

23 (1) “Employer” means any person, individual, partnership, association, corporation,
24 business trust, or any other organized group or successor of an individual, partnership,
25 association, corporation, OR trust of persons employing [2] 1 or more [persons]
26 EMPLOYEES in the City of Baltimore.

27 (2) “Employer” [shall] DOES not include the United States, any State, or any political
28 subdivision thereof, EXCEPT FOR THE CITY OF BALTIMORE.

29 (3) “EMPLOYER” INCLUDES THE CITY OF BALTIMORE.

30 (d) *Employee.*

31 (1) “Employee” means any person [permitted or instructed to work or be present by an
32 employer] WHO WORKS FOR AN EMPLOYER, OR IS EXPECTED TO WORK FOR AN

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1 EMPLOYER, FOR 25 HOURS OR MORE IN A CALENDAR YEAR WITHIN THE GEOGRAPHIC
2 BOUNDARIES OF THE CITY OF BALTIMORE.

3 (2) “Employee” [shall] DOES not include:

4 (i) persons engaged in the activities of an educational, charitable, religious, or
5 other nonprofit organization where the services rendered to such organization
6 are on a voluntary basis, or in return for charitable aid conferred upon such
7 person;

8 (ii) [persons employed in a bona fide executive, supervisory, or professional
9 capacity] PERSONS EXEMPT FROM THE MINIMUM WAGE AND MAXIMUM HOURS
10 REQUIREMENTS UNDER § 213(A)(1) OF THE FAIR LABOR STANDARDS ACT (29
11 U.S.C. §§ 201 - 219); OR

12 (iii) persons employed by any member of their immediate family[;].

13 [(iv) persons compensated upon a commission basis only; or]

14 [(v) persons employed as domestics within a home, only to the extent that such
15 persons have been exempted from the Federal Fair Labor Standards Act as
16 amended and as hereafter amended.]

17 (E) *TIPS.*

18 “TIPS” MEANS A VERIFIABLE SUM PRESENTED BY A CUSTOMER AS A GIFT OR VOLUNTARY
19 GRATUITY IN RECOGNITION OF SOME SERVICE PERFORMED FOR THE CUSTOMER BY THE
20 EMPLOYEE RECEIVING THE TIP.

21 (F) *TIPPED EMPLOYEE.*

22 “TIPPED EMPLOYEE” MEANS AN EMPLOYEE WHO:

23 (I) CUSTOMARILY AND REGULARLY RECEIVES MORE THAN \$30 A MONTH IN TIPS;

24 (II) HAS BEEN INFORMED BY THE EMPLOYER IN WRITING ABOUT THE TIP NOTICE
25 PROVISIONS REQUIRED BY THIS SUBTITLE; AND

26 (III) RETAINS ALL TIPS OR SPLITS TIPS WITH OTHER TIPPED EMPLOYEES IN VALID TIP
27 POOL.

28 **§ 1-2. Findings; policy.**

29 (a) *Findings of fact.*

30 The Mayor and City Council, after [conducting an investigation of] CONSIDERING
31 employment conditions AND THE COST OF LIVING in the City of Baltimore, hereby find:

32 (1) that many persons employed in Baltimore are paid wages which, in relation to the
33 cost of living in the City and the income necessary to sustain minimum standards

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1 of decent living conditions, are insufficient to provide adequate maintenance for
2 themselves and their families;

3 (2) that the employment of such persons at such wages:

4 (i) impairs the health, efficiency, and well-being of the persons so employed
5 and of their families;

6 (ii) reduces the purchasing power of such persons;

7 (iii) diminishes and depresses business, trade, and industry in the City;

8 (iv) threatens the stability and well-being of the City's economic life;

9 [(v) fosters and contributes toward slum conditions and housing evils;]

10 [(vi)] creates conditions of want and deprivation tending to weaken and
11 undermine family life and breed crime and juvenile delinquency;]

12 (V) [(vii)] threatens the health, welfare, and well-being of the people of the
13 City; and

14 (VI) [(viii)]injures the City economically.

15 (b) *Declaration of policy.*

16 (1) Accordingly, it is the declared policy of the Mayor and City Council that such
17 conditions be eliminated as rapidly as practicable without substantially curtailing
18 opportunities for employment or earning power.

19 (2) To that end, legislation is necessary in the public interest in order to end these
20 conditions so inimical to the public health, safety, and welfare of the citizens of
21 Baltimore, to establish minimum wage standards for all employees as herein defined
22 at a level consistent with their health, welfare, and general well-being.

23 § 1-3. Severability.

24 If any provision of this Division I or the application thereof to any person or circumstances is
25 held invalid, the remainder of the Division I and the application thereof to other persons or
26 circumstances shall not be affected thereby.

27 § 1-4. OTHER LEGAL REQUIREMENTS.

28 THIS DIVISION I PROVIDES MINIMUM REQUIREMENTS AND SHALL NOT BE CONSTRUED TO
29 PREEMPT, LIMIT, OR OTHERWISE AFFECT THE APPLICABILITY OF ANY OTHER LAW,
30 REGULATION, RULE, REQUIREMENT, POLICY, OR STANDARD THAT PROVIDES FOR GREATER
31 PROTECTIONS TO EMPLOYEES.

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§ 1-5. NO EFFECT ON MORE GENEROUS POLICIES.

NOTHING IN THIS DIVISION I SHALL BE CONSTRUED TO DISCOURAGE OR PROHIBIT THE ADOPTION OR RETENTION OF A WAGE POLICY MORE GENEROUS THAN THAT WHICH IS REQUIRED HEREIN.

Subtitle 2. Wage Commission

§ 2-2. Members.

(a) *In general.*

The Commission comprises 5 persons of integrity and experience, who shall be appointed by the Mayor subject to the approval of the City Council, INCLUDING:

(1) 2 REPRESENTATIVES FROM THE LABOR COMMUNITY;

(2) 2 REPRESENTATIVES FROM COMMUNITY-BASED ORGANIZATIONS; AND

(3) 1 REPRESENTATIVE FROM THE BUSINESS COMMUNITY.

(B) *TERM.*

COMMISSION MEMBERS ARE APPOINTED FOR TERMS OF 2 YEARS.

(C) [(b)] *Vacancies.*

If a vacancy occurs on the Commission, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(D) [(c)] *Oath.*

Each member of the Commission, within 10 days after appointment, shall take an oath of office that so far as it devolves upon him or her, she or he will diligently and honestly administer the affairs of the Commission, and the oath shall be subscribed to by the member making it and certified by the Mayor before whom it is taken.

(E) [(d)] *Compensation; expenses.*

The Commission members shall serve without compensation, but shall be reimbursed for all expenses necessarily incurred.

§ 2-5. General powers and duties.

The Commission is authorized to and shall have the power to:

(1) formulate and carry out a comprehensive educational and action program designed to eliminate the payment of substandard wages to employees in the City of Baltimore;

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- 1 (2) receive, investigate, and take action as herein provided on all complaints of payment
2 of less than the minimum wage required by this Division I;
- 3 (3) conduct such investigations on its own initiative as it deems proper to effectuate the
4 purposes of this Division I;
- 5 (4) monitor and assist in the fulfillment of any agreements negotiated with employers to
6 effect their compliance with this Division I;
- 7 (5) make appropriate findings as a result of any of its investigations; [and]
- 8 (6) in carrying out its powers and duties, inspect payroll AND EMPLOYMENT records of
9 any business without prior notice;
- 10 (7) ISSUE SUBPOENAS;
- 11 (8) EXAMINE WORKPLACES;
- 12 (9) INTERVIEW EMPLOYEES AND FORMER EMPLOYEES IN PRIVATE AND OFF THE
13 EMPLOYER'S PREMISES; AND
- 14 (10) PUBLICIZE ONLINE AND IN OTHER MEDIA THE NAMES OF EMPLOYERS THAT VIOLATE
15 THIS DIVISION I.

16 § 2-6. Rules and regulations.

17 (a) *Commission may adopt.*

18 The Commission is authorized to and shall have the power to adopt such rules and
19 regulations as it may deem necessary to:

- 20 (1) effect compliance with this Division I;
- 21 (2) govern its procedures; and
- 22 (3) execute the duties and responsibilities imposed on it herein.

23 [(b) *Scope.*]

24 [Such rules and regulations may include, but are not limited to:]

- 25 [(1) those further defining:
 - 26 (i) persons engaged in voluntary service to a nonprofit organization;
 - 27 (ii) persons employed in a bona fide executive, supervisory, or professional
28 capacity;

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1 (iii) persons employed by any member of their immediate family; and

2 (iv) persons compensated upon a commission basis; and]

3 [(2) those:

4 (i) establishing deductions in allowance for the reasonable value of uniforms,
5 board, lodging, or other facilities, items, or services supplied by the
6 employer;

7 (ii) defining students and employees customarily receiving tips; and

8 (iii) defining handicapped persons, for the purposes of § 3-2 of this Division
9 I.]

10 (B) [(c)] *Publication.*

11 All rules and regulations [so] adopted [shall] UNDER THIS SECTION MUST be:

12 (1) published by the Commission as soon as possible after their adoption; and

13 (2) made available ON THE CITY'S WEBSITE AND ON PAPER, without charge, to any
14 persons requesting them.

15 **§ 2-7. MULTILINGUAL POSTERS.**

16 (A) *POSTER TO BE PROVIDED.*

17 THE COMMISSION MUST PRODUCE, AND FURNISH TO ALL EMPLOYERS WITHOUT CHARGE, A
18 POSTER CONTAINING A SUMMARY OF THIS DIVISION I.

19 (B) *POSTER LANGUAGES.*

20 THE COMMISSION MUST MAKE THIS POSTER AVAILABLE IN:

21 (1) ENGLISH;

22 (2) SPANISH; AND

23 (3) ANY OTHER LANGUAGES SPOKEN BY MORE THAN FIVE PERCENT (5%) OF THE
24 WORKFORCE IN THE CITY OF BALTIMORE.

25 **§ 2-8. INTERAGENCY COOPERATION.**

26 THE COMMISSION MUST TAKE STEPS TO ENSURE OPTIMAL COLLABORATION AMONG ALL CITY
27 AGENCIES AND DEPARTMENTS, AS WELL AS BETWEEN THE CITY AND STATE AND FEDERAL
28 LABOR STANDARDS AGENCIES, IN THE ENFORCEMENT OF THIS DIVISION I.

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§ 2-9. OUTREACH PARTNERSHIP.

THE COMMISSION MUST ESTABLISH AN EDUCATION AND OUTREACH PROGRAM IN PARTNERSHIP WITH COMMUNITY-BASED ORGANIZATIONS FOR PURPOSES OF IMPLEMENTING THIS DIVISION I. THIS PROGRAM MAY INCLUDE, BUT IS NOT LIMITED TO, CONTRACTING WITH ONE OR MORE COMMUNITY-BASED ORGANIZATIONS TO PROVIDE ANY OR ALL OF THE FOLLOWING:

- (1) EDUCATION AND OUTREACH TO EMPLOYEES AND EMPLOYERS REGARDING THEIR RIGHTS AND OBLIGATIONS UNDER THIS DIVISION I;
- (2) ASSISTANCE FOR EMPLOYEES WHO WISH TO FILE COMPLAINTS;
- (3) ASSISTANCE FOR EMPLOYEES WHO HAVE FILED COMPLAINTS TO FACILITATE THE RESOLUTION OF COMPLAINTS AND INVESTIGATIONS; AND
- (4) SUPPORT FOR THE COMMISSION'S INVESTIGATIONS, WORKSITE MONITORING, AND OTHER ENFORCEMENT INITIATIVES.

Subtitle 3. Wage Requirements

§ 3-1. Minimum wage required.

(a) *Employers must pay.*

Subject to the other provisions of this Division I, every employer operating and doing business in Baltimore City [shall] MUST pay wages to each employee in the City at a rate not less than the minimum wage required by [the Federal Fair Labor Standards Act, as amended] THIS SECTION.

(B) *MINIMUM WAGE.*

THE MINIMUM WAGE SHALL BE AN HOURLY RATE DEFINED AS FOLLOWS:

- (1) STARTING JULY 1, 2016, \$8.75;
- (2) STARTING JANUARY 1, 2017, \$10.00;
- (3) STARTING JULY 1, 2017, \$10.50;
- (4) STARTING JULY 1, 2018, \$12.00;
- (5) STARTING JULY 1, 2019, \$13.50;
- (6) STARTING JULY 1, 2020, \$15.00; AND
- (7) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2021, AND EACH SUBSEQUENT 12-MONTH PERIOD, THE MINIMUM WAGE WILL BE SET IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.

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1 (C) *ANNUAL COST OF LIVING ADJUSTMENT.*

2 (1) TO PREVENT INFLATION FROM ERODING ITS VALUE, BEGINNING ON JULY 1, 2021, AND
3 ON JULY 1 OF EACH SUBSEQUENT YEAR, THE MINIMUM WAGE SHALL INCREASE BY AN
4 AMOUNT CORRESPONDING TO THE PRIOR YEAR'S INCREASE IN THE COST OF LIVING AS
5 MEASURED BY THE PERCENTAGE INCREASE, IF ANY, AS OF MARCH OF THE
6 IMMEDIATELY PRECEDING YEAR OVER THE LEVEL AS OF MARCH OF THE PREVIOUS
7 YEAR OF THE NON-SEASONALLY ADJUSTED CONSUMER PRICE INDEX (URBAN WAGE
8 EARNERS AND CLERICAL WORKERS, U.S. CITY AVERAGE FOR ALL ITEMS) OR ITS
9 SUCCESSOR INDEX AS PUBLISHED BY THE U.S. DEPARTMENT OF LABOR OR ITS
10 SUCCESSOR AGENCY, WITH THE AMOUNT OF THE MINIMUM WAGE INCREASE ROUNDED
11 TO THE NEAREST MULTIPLE OF 5 CENTS.

12 (2) THE ADJUSTED MINIMUM WAGE MUST BE DETERMINED AND ANNOUNCED BY THE
13 COMMISSION BY MAY 1 OF EACH YEAR, AND BECOMES EFFECTIVE AS THE NEW
14 MINIMUM WAGE ON JULY 1 OF EACH YEAR.

15 (D) *EFFECT OF MARYLAND OR FEDERAL MINIMUM WAGE INCREASE.*

16 (1) IN THE EVENT THAT THE MARYLAND OR FEDERAL MINIMUM WAGE IS INCREASED
17 ABOVE THE LEVEL OF THE MINIMUM WAGE THAT IS IN FORCE UNDER THIS SUBTITLE,
18 THE MINIMUM WAGE UNDER THIS SUBTITLE SHALL BE INCREASED TO MATCH THE
19 HIGHER MARYLAND OR FEDERAL WAGE, EFFECTIVE ON THE SAME DATE AS THE
20 INCREASE IN THE MARYLAND OR FEDERAL MINIMUM WAGE, AND SHALL BECOME THE
21 NEW CITY MINIMUM WAGE IN EFFECT UNDER THIS SUBTITLE.

22 (2) THE NEW CITY MINIMUM WAGE SET BY PARAGRAPH (1) OF THIS SUBSECTION IS THEN
23 SUBJECT TO AN ANNUAL COST OF LIVING ADJUSTMENT UNDER SUBSECTION (C) OF THIS
24 SECTION ON JULY 1 OF THE CALENDAR YEAR FOLLOWING ANY INCREASE IN THE
25 MARYLAND OR FEDERAL MINIMUM WAGE, AND IN EACH SUBSEQUENT YEAR.

26 (E) *OPPORTUNITY WAGE FOR YOUTH JOB PROGRAMS.*

27 YOUTH PARTICIPANTS IN THE CITY'S YOUTHWORKS SUMMER JOBS PROGRAM OR THE
28 CITY'S HIRE ONE YOUTH PROGRAM MAY BE PAID 85% OF THE MINIMUM WAGE SET BY
29 THIS SECTION WHEN EMPLOYED IN THE ELIGIBLE PROGRAM.

30 (F) [(b)] *Violations.*

31 It is a violation of this Division I for any employer to pay any employee a wage less than
32 the minimum wage required by this Division I, and it is a separate violation each time an
33 employee is not paid the wage required by this Division I at the time the employee is
34 entitled to be paid.

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1 **[§ 3-2. Exceptions.]**

2 [(a) *Allowance for employer-supplied items or services.*

3 (1) For purposes of this Division I, wages shall include the reasonable value, as
4 determined by the Wage Commission, of uniforms, board, lodging, or other facilities,
5 items, or services furnished such employee by the employer.

6 (2) Provided that the Wage Commission is empowered to determine such value by
7 reference to the average cost to the employer or to groups of employers similarly
8 situated.]

9 [(b) *Full-time students.*

10 (1) Any employee who is a full-time student in a primary or secondary school, as such
11 term is further defined by the Wage Commission, may be paid 85% of the minimum
12 wage prescribed herein.

13 (2) Provided, however, that such students may not be employed for more than 28 hours
14 per week while attending school.

15 (3) It shall be a violation of this Division I for any employer to employ such a full-time
16 student for more than 28 hours per week while school is in session.]

17 [(c) *Work-study programs.*

18 Students enrolled in an approved work-study program shall be exempt from the
19 limitations of subsection (b) of this section and from the minimum wage requirements of
20 this Division I. Work study programs must be approved by the Wage Commission.]

21 [(d) *Employees customarily receiving tips.*

22 (1) With respect to any employee engaged in an occupation in which he customarily and
23 regularly receives more than \$30 a month in tips, the employer shall pay wages in the
24 amount not less than the amount required to be paid a tipped employee under the
25 Federal Fair Labor Standards Act, as amended.

26 (2) It is the employer's obligation to provide evidence of any amount claimed by him as
27 being received by his employee as tips.]

28 [(e) *Employees with disabilities.*

29 (1) The Wage Commission may, in its discretion, recognize certificates issued by the
30 State of Maryland for payment of less than the minimum wage to persons who are
31 mentally or physically handicapped, or the Commission may issue its own certificates.

32 (2) Provided, that the Commission's said recognition or certification may be upon such
33 terms and for such period of time as the Commission deems appropriate.]

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1 [(f) *Opportunity wages.*

2 An employer may pay an opportunity wage (i.e., a wage below the minimum wage) to any
3 employee, but only under the conditions and limitations authorized for opportunity wages
4 by the Federal Fair Labor Standards Act, as amended.]

5 **§ 3-2. EXCEPTION – TIPPED EMPLOYEES.**

6 (A) *TIP CREDIT.*

7 (1) UNTIL JULY 1, 2025, AN EMPLOYER MAY CONSIDER TIPS AS PART OF WAGES OF A
8 TIPPED EMPLOYEE, IF:

9 (I) THE EMPLOYER DEMONSTRATES THAT THE TIPPED EMPLOYEE RECEIVED AT
10 LEAST THE MINIMUM WAGE ESTABLISHED BY § 3-1 WHEN THE TIPS RECEIVED
11 AND RETAINED BY THE TIPPED EMPLOYEE ARE COMBINED WITH THE MINIMUM
12 CASH WAGE PAID DIRECTLY BY THE EMPLOYER; AND

13 (II) THE EMPLOYEE HAS BEEN INFORMED IN WRITING BY THE EMPLOYER OF THE
14 PROVISIONS OF THIS SUBTITLE.

15 (2) STARTING ON JULY 1, 2025, AN EMPLOYER MAY NOT CONSIDER TIPS AS PART OF
16 WAGES OF A TIPPED EMPLOYEE FOR PURPOSES OF COMPLYING WITH THIS SUBTITLE.

17 (B) *MINIMUM CASH WAGE RATE FOR TIPPED EMPLOYEES.*

18 PROVIDED THAT AN EMPLOYEE ACTUALLY RECEIVES TIPS IN AN AMOUNT AT LEAST EQUAL
19 TO THE DIFFERENCE BETWEEN THE CASH WAGE PAID AND THE MINIMUM WAGE AS
20 PROVIDED BY § 3-1 OF THIS SUBTITLE, THE MINIMUM CASH WAGE THAT EMPLOYERS MUST
21 PAY TO TIPPED EMPLOYEES BEFORE TIPS SHALL BE AN HOURLY RATE OF NOT LESS THAN
22 THE WAGE RATES DEFINED AS FOLLOWS:

23 (1) UNTIL JANUARY 1, 2017, \$3.63, OR AN AMOUNT EQUAL TO THE STATE MINIMUM
24 WAGE IN EFFECT UNDER STATE LABOR AND EMPLOYMENT ARTICLE § 3-413(C)
25 MINUS THE MAXIMUM TIP CREDIT IN EFFECT UNDER STATE LABOR AND
26 EMPLOYMENT ARTICLE §3-419(C), WHICHEVER IS HIGHER;

27 (2) STARTING JANUARY 1, 2017, \$4.50;

28 (3) STARTING JULY 1, 2017, \$5.25;

29 (4) STARTING JULY 1, 2018, \$6.00;

30 (5) STARTING JULY 1, 2019, \$7.50;

31 (6) STARTING JULY 1, 2020, \$9.00;

32 (7) STARTING JULY 1, 2021, \$10.50;

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1 (8) STARTING JULY 1, 2022, \$12.00;

2 (9) STARTING JULY 1, 2023, \$14.00;

3 (10) STARTING JULY 1, 2024, \$15.00; AND

4 (11) STARTING JULY 1, 2025, THE MINIMUM CASH WAGE REQUIRED TO BE PAID BY ANY
5 EMPLOYER IN THE CITY TO ANY EMPLOYEE WHO RECEIVES TIPS WILL BE NOT LESS
6 THAN THE MINIMUM WAGE SET BY § 3-1 OF THIS SUBTITLE.

7 (C) *TIP POOLS.*

8 (1) ALL TIPS RECEIVED BY TIPPED EMPLOYEES ARE THE SOLE PROPERTY OF THE TIPPED
9 EMPLOYEE AND SHALL BE RETAINED BY THE TIPPED EMPLOYEE.

10 (2) THIS SECTION DOES NOT PROHIBIT A VALID TIP POOL UNDER WHICH TIPS ARE POOLED
11 AND DISTRIBUTED AMONG TIPPED EMPLOYEES.

12 (3) IF AN EMPLOYEE PARTICIPATES IN A VALID TIP POOL, ONLY THE AMOUNT ACTUALLY
13 RETAINED BY EACH EMPLOYEE IS CONSIDERED TO BE A PART OF THAT EMPLOYEE'S
14 WAGES FOR PURPOSES OF THIS SECTION.

15 **§ 3-4. Withholding.**

16 (a) *Required consent.*

17 No employer [shall] MAY withhold any part of the wages or salary of any employee,
18 except for those deductions:

19 (1) REQUIRED BY LAW;

20 (2) [in accordance with] EXPRESSLY ALLOWED BY law, AND MADE WITH THE [without]
21 written and signed authorization of the employee; OR

22 (3) ORDERED BY A COURT OF COMPETENT JURISDICTION.

23 (b) *Violations.*

24 It shall be a violation of this Division I for any employer to make any such prohibited
25 withholding from the pay of any employee, and it shall be deemed a separate violation
26 when any such prohibited withholding is made from any paycheck of any employee.

27 **§ 3-5. Wages due on termination of employment.**

28 It shall be a violation of this Division I for any employer to FAIL TO OR refuse to pay to
29 any employee who is terminated, resigns, retires, or who otherwise ends or suspends his
30 employment, all wages due and owing to said employee on the next regular payday that
31 said wages would otherwise have been paid.

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§ 3-6. Posting summary of law.

(a) *Employer to post.*

Every employer subject to this Division I [shall keep] MUST POST EACH OF THE POSTERS MADE AVAILABLE BY THE COMMISSION UNDER § 2-7 {"MULTILINGUAL POSTERS"} OF THIS DIVISION containing a summary of this Division I [, furnished by the Commission without charge, posted] in a conspicuous place ACCESSIBLE TO ALL EMPLOYEES on or about the premises [wherein] WHERE any person subject to this Division I is employed.

(b) *Violations.*

Failure to so post [said summary shall be deemed] THE POSTERS REQUIRED TO BE POSTED BY SUBSECTION (A) OF THIS SECTION IS a violation of this Division I.

§ 3-8. Payroll records.

(a) *Required information; maintenance period.*

(1) Every employer subject to this Division I shall keep, for a period of not less than 3 years, a true and accurate record of the:

- (i) name[.];
- (ii) social security number[.];
- (iii) address at time of employment[.];
- (iv) occupation[.];
- (v) time worked each day[.]; and
- (vi) rate of pay

for each of his employees.

(2) Any employer who fails to maintain such records shall be in violation of this Division I, and it shall be deemed a separate violation thereof as to each employee for whom records are not fully maintained.

(b) *Right of inspection.*

(1) The Commission or its authorized representative [shall have] HAS the right, at all reasonable times, to enter upon the premises of any employer to inspect [such] THE records REQUIRED TO BE KEPT BY SUBSECTION (A) OF THIS SECTION to ascertain whether the provisions of this Division I have been complied with.

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1 (2) AN EMPLOYER MUST ALLOW AN EMPLOYEE TO INSPECT THE RECORDS REQUIRED TO BE
2 KEPT BY SUBSECTION (A) OF THIS SECTION PERTAINING TO THAT EMPLOYEE AT A
3 REASONABLE TIME AND PLACE.

4 (3) [(2)] It [shall be] IS a violation of this Division I to prevent, obstruct, or to attempt
5 to prevent or obstruct [such] THE entries and inspections ALLOWED BY THIS
6 SUBSECTION.

7 (C) *EFFECTS OF FAILURE TO MAINTAIN RECORDS.*

8 IF AN EMPLOYER FAILS TO CREATE AND RETAIN CONTEMPORANEOUS WRITTEN OR
9 ELECTRONIC RECORDS DOCUMENTING ITS EMPLOYEES' WAGES EARNED, OR DOES NOT
10 ALLOW THE COMMISSION REASONABLE ACCESS TO ITS RECORDS, IT SHALL BE PRESUMED
11 THAT THE EMPLOYER HAS VIOLATED THIS DIVISION I, AND THE EMPLOYEE'S REASONABLE
12 ESTIMATE REGARDING HOURS WORKED AND WAGES PAID SHALL BE RELIED ON, ABSENT
13 CLEAR AND CONVINCING EVIDENCE OTHERWISE.

14 **Subtitle 4. Enforcement Procedures**

15 **§ 4-1. Complaints by employee OR OTHER PERSON.**

16 (a) *[Filing with] COMPLAINTS TO THE Commission.*

17 [Any person claiming to be aggrieved by an alleged payment of a wage of a lesser amount
18 than required by] AN EMPLOYEE OR ANY OTHER PERSON MAY MAKE A COMPLAINT BY
19 REPORTING ANY SUSPECTED VIOLATION OF this Division I [may, by himself or his
20 attorney, within 1 year after the occurrence of the alleged unlawful act, make, sign, and
21 file with] TO the Commission WITHIN 3 YEARS OF THE SUSPECTED VIOLATION [a
22 complaint in writing, under oath].

23 (b) *Contents.*

24 The complaint shall state the name and address of the employer alleged to have paid the
25 unlawful wage (hereinafter referred to as the respondent) and the particulars thereof, and
26 contain such other information as may be required by the Commission.

27 (C) *COMPLAINTS TO BE ACCEPTED IN WRITING, ONLINE, OR BY TELEPHONE.*

28 THE COMMISSION MUST ESTABLISH A SYSTEM TO RECEIVE COMPLAINTS REGARDING
29 NON-COMPLIANCE WITH THIS DIVISION I IN WRITING, ONLINE, AND BY TELEPHONE IN
30 ENGLISH, SPANISH, AND ANY OTHER LANGUAGE SPOKEN BY MORE THAN 5% OF THE
31 BALTIMORE CITY WORKFORCE.

32 **§ 4-2. Complaints by Commission.**

33 The Commission [shall have] HAS the right, acting upon its own initiative and without any
34 complaint from an employee, to [file] INITIATE a complaint against an employer whenever the
35 Commission has reasonable cause to believe that [such] THE employer is or has been in
36 violation of the provisions of this Division I.

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§ 4-3. Investigation for probable cause.

(A) *IN GENERAL.*

After the [filing] INITIATION of any [such] complaint, [either by a person claiming to be aggrieved as set forth in § 4-1 or by the Commission,] the Commission shall:

- (1) investigate the facts alleged [therein]; and
- (2) make a finding of probable cause for the [said] complaint or lack of it.

(B) *TIMELY INVESTIGATIONS.*

- (1) THE INVESTIGATIONS REQUIRED BY THIS SECTION SHALL BE UNDERTAKEN IN A TIMELY MANNER.
- (2) FOR A COMPLAINT MADE BY AN EMPLOYEE OR OTHER PERSON, THE COMMISSION MUST MAKE EVERY EFFORT TO:
 - (I) CONCLUDE ITS INVESTIGATION WITHIN 120 DAYS FROM RECEIPT OF THE COMPLAINT; AND
 - (II) SETTLE, REQUEST AN ADMINISTRATIVE HEARING, OR INITIATE A CIVIL ACTION UNDER THIS DIVISION I WITHIN 1 YEAR FROM RECEIPT OF THE COMPLAINT.
- (3) THE FAILURE OF THE COMMISSION TO MEET THESE TIMELINES IS NOT GROUNDS FOR CLOSURE OR DISMISSAL OF THE COMPLAINT.

(C) *NOTIFICATIONS.*

- (1) THE COMMISSION MUST:
 - (I) PROVIDE TIMELY NOTIFICATION OF A COMPLAINT, INCLUDING ALL ALLEGED FACTS RELEVANT TO THE COMPLAINT, TO THE RESPONDENT, AND
 - (II) REQUEST THAT THE RESPONDENT MAKE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN 15 DAYS FROM THE DATE OF THE NOTIFICATION .
- (2) THE COMMISSION MUST KEEP COMPLAINANTS AND THEIR ATTORNEYS OR REPRESENTATIVES REASONABLY NOTIFIED REGARDING THE STATUS OF THE PENDING OR ONGOING INVESTIGATION OF THE COMPLAINANT'S COMPLAINT.

(D) *FULL INVESTIGATION OF EMPLOYER.*

WHERE THE COMMISSION RECEIVES OR INITIATES A COMPLAINT, IT SHALL HAVE A POLICY THAT IT INVESTIGATE ANY OTHER VIOLATIONS OR SUSPECTED VIOLATIONS BY THAT EMPLOYER.

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§ 4-5. [Dismissal for lack] FINDING of probable cause.

(A) *PROBABLE CAUSE FOUND.*

IF, AFTER THE INVESTIGATION REQUIRED BY § 4-3 {"INVESTIGATION FOR PROBABLE CAUSE"} OF THIS SUBTITLE, THE COMMISSION FINDS THAT THE COMPLAINT HAS PROBABLE CAUSE, THE COMMISSION MUST:

(1) NOTIFY THE RESPONDENT AND COMPLAINANT THAT PROBABLE CAUSE HAS BEEN FOUND; AND

(2) PROVIDE THE RESPONDENT AND COMPLAINANT WITH THE TIME AND DATE WHEN THE CONFERENCE REQUIRED BY § 4-6 {"PROBABLE CAUSE CONFERENCE; SETTLEMENT AGREEMENT"} OF THIS SUBTITLE WILL BE HELD.

(B) *PROBABLE CAUSE NOT FOUND.*

[If the finding of the Commission is] IF, AFTER THE INVESTIGATION REQUIRED BY § 4-3 {"INVESTIGATION FOR PROBABLE CAUSE"} OF THIS SUBTITLE, THE COMMISSION FINDS that the complaint lacks probable cause, then it [shall] MUST dismiss [said] THE complaint and mail copies of its finding to THE respondent and complainant.

§ 4-6. Probable cause conference; settlement agreement.

(a) *Conference.*

If the Commission finds probable cause for the complaint, the Commission shall attempt, by means of conference, to PERSUADE RESPONDENT TO:

(1) [persuade respondent to] cease and desist its illegal action;

(2) commence paying [complainant such] THE IMPACTED EMPLOYEE OR EMPLOYEES THE lawful wages [as are] required by this Division I; [and]

(3) reimburse [complainant] ALL IMPACTED EMPLOYEES for the difference between what [he] THEY had been receiving as wages and what [he] THEY should have lawfully received; AND

(4) PAY ANY FINES OR PENALTIES ASSESSED BY THE COMMISSION PURSUANT TO THIS DIVISION I.

(b) *Settlement agreement.*

Any such agreement reached between respondent and the Commission shall be reduced to writing and a copy thereof furnished to complainant and respondent.

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1 **§ 4-7. Final order.**

2 (a) *In general.*

3 If:

4 (1) the Commission and the respondent shall fail to reach agreement, or

5 (2) the respondent shall fail to meet his obligations under such agreement:

6 (i) within 30 days thereof, or

7 (ii) within such other time as may be specified therein,

8 the Commission shall make such final order in the proceedings as it deems appropriate.
9 [to:]

10 (B) *CONTENTS OF ORDER.*

11 A FINAL ORDER ISSUED UNDER THIS SECTION WILL:

12 (1) [(3)] require the payment of all wages due TO the respondent's employees
13 [hereunder] UNDER THIS DIVISION I and ALL FINES DUE TO THE CITY UNDER
14 SUBTITLE 6 OF THIS DIVISION 1; AND

15 (2) [(4)] direct the cessation of all practices by the respondent which are contrary to
16 the provisions of this Division I and/or rules and regulations of the
17 Commission.

18 (C) *TIME FOR ISSUANCE OF ORDER.*

19 (1) THE COMMISSION MUST MAKE EVERY EFFORT TO ENTER FINAL ORDERS NO LATER
20 THAN 90 DAYS AFTER THE FIRST DATE ON WHICH:

21 (I) THE PARTIES' ATTEMPTS AT SETTLEMENT FAIL; OR

22 (II) THE RESPONDENT FAILS TO MEET ITS OBLIGATIONS UNDER ANY SETTLEMENT
23 AGREEMENT.

24 (2) THE FAILURE OF THE COMMISSION TO MEET THIS TIMELINE IS NOT GROUNDS FOR
25 CLOSURE OR DISMISSAL OF THE COMPLAINT.

26 (D) [(b)] *Service of order.*

27 A copy of [such] THE order [shall] MUST be furnished TO the respondent by registered
28 mail within 3 days of its passage.

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§ 4-8. [Judicial] ADMINISTRATIVE, JUDICIAL, and appellate review.

(A) *IN GENERAL.*

IF THE COMMISSION ISSUES A FINAL ORDER UNDER § 4-7 {"FINAL ORDER"} OF THIS SUBTITLE, THE COMMISSION MUST PROVIDE THE RESPONDENT WITH NOTICE OF THE FINAL ORDER AND AN OPPORTUNITY FOR A HEARING BEFORE COMMISSION.

(B) *PROCEDURES.*

IN ITS RULES AND REGULATIONS, THE COMMISSION MUST ESTABLISH PROCEDURES TO GOVERN THE CONDUCT OF HEARINGS HELD UNDER THIS SECTION.

(C) *DETERMINATION.*

IF A RESPONDENT REQUESTS A HEARING BEFORE THE COMMISSION UNDER THIS SECTION, THE COMMISSION MUST:

(1) GRANT THE HEARING IN ACCORDANCE WITH ITS RULES AND REGULATIONS;

(2) CONSIDER ALL OF THE EVIDENCE PRESENTED AT THE HEARING; AND

(3) MAKE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW ON EACH ALLEGED VIOLATION.

(D) *FINDINGS.*

(1) IF THE COMMISSION DETERMINES THAT THE FINAL ORDER ISSUED UNDER § 4-7 IS SUPPORTED BY ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT ORDER MUST BE CONFIRMED BY THE COMMISSION.

(2) IF THE COMMISSION DETERMINES THAT THE RESPONDENT HAS VIOLATED THIS DIVISION I, BUT THAT THE FINAL ORDER ISSUED UNDER § 4-7 IS NOT SUPPORTED BY ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION MUST ISSUE A NEW FINAL ORDER THAT CONFORMS WITH ITS FINDINGS.

(3) IF THE COMMISSION DETERMINES THAT THE RESPONDENT HAS NOT VIOLATED THIS DIVISION I, THE COMMISSION MUST WITHDRAW THE FINAL ORDER AND DISMISS THE COMPLAINT.

(4) THE COMMISSION MUST PROMPTLY NOTIFY THE COMPLAINANT AND RESPONDENT OF ANY ACTION TAKEN UNDER THIS SUBSECTION.

(E) [(a)] *Judicial review.*

A respondent aggrieved by an order of the Commission ISSUED OR CONFIRMED UNDER SUBSECTION (D) OF THIS SECTION may seek judicial review of that order by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

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1 (F) [(b)] *Appellate review.*

2 A party to the judicial review may appeal the court's final judgment to the Court of
3 Special Appeals in accordance with the Maryland Rules of Procedure.

4 § 4-9. Referral to Solicitor.

5 If, within 30 days of the [passage of such order] ISSUANCE OF A FINAL ORDER UNDER §§ 4-7
6 {"FINAL ORDER"} OR 4-8 {"ADMINISTRATIVE, JUDICIAL, AND APPELLATE REVIEW"}, the
7 respondent shall have failed to comply [therewith] WITH THE ORDER, the Wage Commission
8 [may] MUST certify [such] THE proceedings to the City Solicitor and request that [he] THE
9 SOLICITOR petition the Circuit Court of Baltimore City to enforce the [said] order and direct
10 payment OF ALL WAGES AND PENALTIES DUE UNDER THIS DIVISION I [to the aggrieved
11 employee].

12 § 4-10. Confidential information.

13 (a) *Employer's payroll.*

14 The records of the Commission in any proceeding or investigation made pursuant to the
15 provisions of this Division I shall be kept confidential to the extent that they disclose the
16 payroll of any employer, except for the use of a complainant employee, THE COMMISSION
17 IN THE INVESTIGATION OF OTHER VIOLATIONS OR SUSPECTED VIOLATIONS, or [other]
18 ANOTHER public agency.

19 (b) *Identity of complainant.*

20 (1) Neither the Commission nor any of its employees may be compelled in any hearing
21 before the Commission or other administrative proceeding, to disclose the identity of
22 any person filing a complaint with the Commission under the provisions of this
23 Division I.

24 (2) The Commission shall, however, have the right in its sole discretion to make such
25 disclosure in any instance where the Commission deems it appropriate to do so.

26 Subtitle 5. Other Prohibited Conduct

27 § 5-1. By employer - retaliation against employee.

28 (A) *FAMILY MEMBER DEFINED.*

29 IN THIS SECTION, "FAMILY MEMBER" MEANS A SPOUSE, PARENT, SIBLING, CHILD, UNCLE,
30 AUNT, NIECE, NEPHEW, COUSIN, GRANDPARENT, OR GRANDCHILD RELATED BY BLOOD,
31 ADOPTION, MARRIAGE, OR DOMESTIC PARTNERSHIP, OR ANY OTHER INDIVIDUAL RELATED
32 BY AFFINITY WHOSE CLOSE ASSOCIATION WITH THE EMPLOYEE IS THE EQUIVALENT OF A
33 FAMILY RELATIONSHIP.

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1 (B) [(a)] *In general.*

2 [It shall be unlawful, and a violation of this Division I, for any employer to discharge or
3 reduce the compensation of any employee for:

- 4 (1) making a complaint to the Wage Commission;
5 (2) participating in any of its proceedings; or
6 (3) availing himself of any of the civil remedies provided herein.]

7 (1) IT IS UNLAWFUL AND A VIOLATION OF THIS DIVISION I FOR AN EMPLOYER, OR ANY
8 OTHER PARTY, TO DISCRIMINATE IN ANY MANNER OR TAKE ADVERSE ACTION AGAINST
9 ANY PERSON IN RETALIATION FOR EXERCISING OR ATTEMPTING TO EXERCISE ANY
10 RIGHT PROVIDED BY THIS DIVISION I.

11 (2) PROHIBITED DISCRIMINATION OR RETALIATION UNDER THIS SUBSECTION INCLUDES
12 ANY RECOMMENDED, THREATENED, OR ACTUAL ADVERSE ACTION, INCLUDING:

- 13 (I) TERMINATION, DEMOTION, SUSPENSION, OR REPRIMAND;
14 (II) INVOLUNTARY TRANSFER, REASSIGNMENT, OR DETAIL TO AN ASSIGNMENT
15 THAT A REASONABLE PERSON WOULD FIND LESS FAVORABLE;
16 (III) FAILURE TO PROMOTE, HIRE, OR TAKE OTHER FAVORABLE PERSONNEL ACTION;
17 (IV) REPORTING, OR THREATENING TO REPORT, THE ACTUAL OR SUSPECTED
18 CITIZENSHIP OR IMMIGRATION STATUS OF AN EMPLOYEE, FORMER EMPLOYEE,
19 OR FAMILY MEMBER OF AN EMPLOYEE TO A FEDERAL, STATE, OR LOCAL
20 AGENCY; OR
21 (V) ENGAGING IN ANY CONDUCT THAT WOULD DISSUADE A REASONABLE
22 EMPLOYEE FROM ENGAGING IN ACTIVITIES PROTECTED BY THIS DIVISION I.

23 (3) THE PROTECTIONS OF THIS SECTION APPLY TO ANY PERSON WHO MISTAKENLY BUT IN
24 GOOD FAITH ALLEGES A VIOLATION OF THIS DIVISION I.

25 (C) *RIGHTS PROTECTED.*

26 RIGHTS UNDER THIS DIVISION I PROTECTED BY THIS SECTION INCLUDE, BUT ARE NOT
27 LIMITED TO:

- 28 (1) REQUESTING PAYMENT OF THE MINIMUM OR OVERTIME WAGE;
29 (2) MAKING OR FILING A COMPLAINT TO THE COMMISSION, OR IN COURT, FOR ALLEGED
30 VIOLATIONS OF THIS DIVISION I;
31 (3) PARTICIPATING IN ANY OF THE COMMISSION'S PROCEEDINGS OR IN ANY
32 ADMINISTRATIVE OR JUDICIAL ACTION REGARDING AN ALLEGED VIOLATION OF
33 THIS DIVISION I;

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1 (4) MAKING USE OF ANY OF THE CIVIL REMEDIES PROVIDED IN THIS DIVISION I; OR

2 (5) INFORMING ANY PERSON OF HIS OR HER POTENTIAL RIGHTS UNDER THIS DIVISION I.

3 (D) *REBUTTABLE PRESUMPTION.*

4 TAKING ADVERSE ACTION AGAINST A PERSON WITHIN 90 DAYS OF THE PERSON'S EXERCISE
5 OF RIGHTS PROTECTED UNDER THIS DIVISION I SHALL RAISE A REBUTTABLE PRESUMPTION
6 OF HAVING DONE SO IN RETALIATION FOR THE EXERCISE OF THOSE RIGHTS.

7 (E) [(b)] *Restitution or reinstatement with backpay.*

8 In [such] a case ARISING OUT OF A VIOLATION OF THIS SECTION, the Wage Commission
9 may, pursuant to the procedures provided in Subtitle 4 hereof, order appropriate
10 restitution [or] INCLUDING:

11 (1) the reinstatement of [such] THE employee with backpay to the date of violation;
12 AND

13 (2) UNPAID WAGES.

14 **§ 5-2. By employer - violation of rule or regulation.**

15 It [shall be] IS unlawful, and a violation of this Division I, for any employer to violate the
16 rules and regulations of the Commission.

17 **[§ 5-6. By employees.]**

18 [It shall be unlawful, and a violation of this Division I, for any employee to:

19 (1) make any groundless, unfounded, or malicious complaint to the Commission; or

20 (2) in bad faith, institute or testify in any proceeding before the Commission under the
21 provisions hereof.]

22 **Subtitle 6. Penalties and Fines**

23 **§ 6-2. Fines.**

24 Any employer [or employee] who violates this Division I shall forfeit and pay to the City of
25 Baltimore a penalty as follows:

26 (1) for a 1st offense, [\$250] \$300 for each violation;

27 (2) for a 2nd offense, [\$500] \$550 for each violation; and

28 (3) for each subsequent offense, \$1,000 for each violation.

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1 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
2 are not law and may not be considered to have been enacted as a part of this or any prior
3 Ordinance.

4 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
5 after the date it is enacted.